

If a seller and buyer agree upon the installation charges separately from the selling price of the tangible personal property which is sold, then the receipts from the installation charges are not a part of the "selling price" of the tangible personal property which is sold. Instead such charges constitute a service charge, separately contracted for, which need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.450. (This is a GIL).

August 7, 2002

Dear Xxxxx:

This letter is in response to your letter dated April 17, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

AAA would like to request a private ruling letter on the taxability of installation services done by AAA in the state of Illinois. We believe that our installation services are not taxable.

AAA, a seller of telecommunications power systems, in June of 2001, acquired BBB, an installer of telecommunications equipment, in order to offer our customers expanded services. The end user of our products are public utilities and the equipment is installed in the central offices of the utilities. The cost of the installation is not included in the selling price of the equipment but is accounted for separately from the equipment. Often the customer provides a separate purchase order. Equipment and installation are always invoiced separately. We also will install our competitors' equipment. Even though we have now become both a seller and installer of telecommunications equipment, we do maintain a separation between them. We consider installation a separate product line from our equipment. We maintain separate product line financial statements for both equipment and installation.

When we acquired BBB their major customer was CCC, and BBB had an existing contract. This contract has been assigned to AAA as of the date of the acquisition. As of the current date, CCC is still our major customer for installation. We are enclosing a copy of the contract. This contract is confidential and we request that no portion of this contract be included in the publicly disseminated version of the private letter ruling.

We request that this ruling include all tax periods from June 2001 and forward. We have paid sales tax on any installation we have done in the state of Illinois for this period. We

are currently not under audit by the state of Illinois nor do we have any litigation pending with the state of Illinois.

The department has not previously ruled on this issue for AAA or BBB. Neither company has requested a ruling on this issue prior to this request.

We use as authority to support that our installation is not taxable the Illinois Department of Revenue Regulations, Title 86, Part 130, Section 130.450(b) which states that 'where the seller and the buyer agree upon the installation, alteration or other special service charges separately from the selling price of the tangible personal property which is sold, then the receipts from the installation, alteration or other special service charge are not a part of the 'selling price' of the tangible personal property which is sold, but instead such charge is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability.' As explained in paragraph two of this request our installation is not part of the selling price of the tangible personal property and is separately contracted for either in the same purchase order or a separate purchase order. For CCC it is in a separate contract.

The only authority that we can find contrary to our view is Illinois Department of Revenue Regulations, Title 86, Part 130, Section 130.450(a). This Regulation states that installation is taxable if it is 'included in the selling price of the tangible personal property which is sold.'

We are unable to grant your request for a Private Letter Ruling. It is unclear from the information you submitted whether tangible personal property is transferred when the installation work is performed.

In Illinois, when a seller engages in the business of selling tangible personal property at retail, and such tangible personal property is installed by the retailer, the receipts from such installation charges must be included in the gross receipts upon which his Retailers' Occupation Tax liability is measured if such installation charges are included in the selling price of the property being sold. If, however, the seller and buyer agree upon the installation charges separately from the selling price of the tangible personal property which is sold, then the receipts from the installation charges are not a part of the "selling price" of the tangible personal property which is sold. Instead such charges constitute a service charge, separately contracted for, which need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability. See Section 130.450.

If the installation is to permanently affix the tangible personal property to real estate, however, the retailer is acting as a construction contractor and he incurs a Use Tax liability only on his cost price of materials. See the enclosed copy of Section 130.1940 and 130.2075

The contract you provided between CCC and BBB appears to be a separate agreement for services. However, it includes incidental deliverables or goods and equipment in addition to professional services and labor. This would appear to indicate that more than just installation is occurring. The language of the contracts does not give us a clear understanding of the exact nature of the transaction for us to determine whether there is a separate contract for installation or whether a service arrangement is taking place.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal

services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code Part 140 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.